S.B. CRIMINAL JAIL REVISION NO.46/2006
(Nasir Khan @ Chikana @ Siraj Vs. State)

Date of order : 23.02.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.R.Bhati, for the petitioner.
Mr. JPS Choudhary, Public Prosecutor.

The instant revision petition has been filed by the convict from the jail challenging the validity of judgment 20.10.2005 passed by the learned Additional Chief Judicial Magistrate, Dhariyavad in Criminal Regular Case No.407/2004 whereby the petitioner was convicted for offence under Section 379 I.PC. and was sentenced to 3 years' R.I. along with fine of Rs.2000/- and in default of payment of fine to further undergo 3 months' S.I. Against the aforesaid judgment and order, the petitioner preferred an appeal before the learned Sessions Judge, Udaipur which came to be transferred to the learned Additional Sessions Judge No.3, Udaipur and the learned Additional Sessions Judge No.3, Udaipur vide judgment dtd.19.12.2005 dismissed and appeal affirming the judgment and order passed by the learned Judicial Magistrate.

During the course of argument, Sh. K.R.Bhati, the learned

Amicus curiae stated that he does not want to challenge the findings recorded by the learned trial Court as well as learned Appellate Court on conviction, but he states that maximum sentence provided for offence under Section 379 I.P.C. is 3 years and in this case there is allegation of theft of motor-cycle which has been recovered from the petitioner. The petitioner is behind bars for last more than 2 years. It has, therefore, been prayed that sentence awarded to the petitioner by the learned trial Court and affirmed by the learned appellate Court be reduced to the period already undergone by him.

I have perused the impugned judgments passed by both the Courts below.

From the facts of the case, it is obvious that the petitioner was convicted for offence under Section 379 I.P.C. for theft of motor-cycle bearing No.RJ27-10M/7517 and said vehicle was recovered from the petitioner. This incident took place on 18.9.2004. From the record, it is also apparent that the sentence awarded to the petitioner was suspended vide order dtd.10.11.2006, but he could not be released on bail as he did not furnish the requisite bail bonds and surety as ordered by this Court.

By way of filing application, it is also brought o the notice of this Court that the petitioner is behind bars since 4.12.2004 and he has already undergone sentence of more than 2 years, therefore, in the interest of justice, sentence awarded to the petitioner by the trial Court and affirmed by the learned appellate Court may kindly be reduced to the petitioner already under gone by him.

In the instant allegation, there is allegation of theft of motor-cycle against the petitioner and he has been convicted for offence under Section 379 I.P.C. for which maximum sentence provided is 3 years and the learned trial Court has awarded maximum sentence which fact requires consideration particularly in view of the fact that the petitioner is behind bars for last more than two years.

For the reasons mentioned above, the present revision petition is partly allowed and while affirming the findings of conviction recorded by the learned trial Court and affirmed by the learned appellate Court, the sentence awarded to the petitioner by the learned trial Court and affirmed by the learned appellate Court is reduced to the period already undergone by him.

The petitioner be released forthwith if not warranted in any other case.

The impugned judgments passed by the learned trial Court and affirmed by the learned appellate Court are modified to the above extent.

(GOPAL KRISHAN VYAS) J.

ss/-